CITATION: Conti v. Daytona Auto Centre Ltd., 2024 ONSC 5677
COURT FILE NO.: CV-23-00697033
DATE: 20241011

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Massimo Conti, Appellant

– AND –

John Duca, Joseph Duca, and Daytona Auto Centre Ltd., Respondents

BEFORE: Justice E.M. Morgan

COUNSEL: *Gregory Gryguc*, for the Appellant

Joseph Duca, on his own behalf

Sergio Grillone, Intervener

HEARD: Cost submissions in writing

COSTS ENDORSEMENT

[1] The Respondents, John Duca, Joseph Duca, and Daytona Auto Centre Ltd. (collectively "Duca") were successful in having an appeal from the order of an Associate Justice dismissed. They were aided in this endeavor by the Intervenor, Sergio Grillone ("Grillone"). In my reasons for decision, I opined that the Associate Justice was correct in discharging a certificate of pending litigation ("CPL") given the number of non-disclosures and misstatements made on behalf of the Appellant, Massimo Conti ("Conti").

[2] Duca was self-represented in the appeal before me. I permitted Grillone to play a role as intervenor, as had the Associate Justice below, as he was a party with a financial interest in the dispute in the sense that he was a creditor of Duca's who expected to be paid from the equity of the property in issue if the CPL were discharged and it could be sold. As I indicated in my reasons, Grillone's submissions were quite helpful. I understand that Grillone is a lawyer by training, but he appeared at the hearing before me as a self-represented party and not as counsel.

[3] Citing *Fong v. Chan*, 2019 CanLII 2052 (ON CA), counsel for Conti submits that self-represented litigants have no right to costs unless they can bring proof of loss resulting from the time spent on the matter. Opposing that position, Duca cites *Mustang Investigations v. Ironside*

2020, 103 OR (3d) 633 (SCJ), at para. 26, for the proposition that self-represented litigants can claim costs where the "demonstrate that they devoted time and effort to do the work ordinarily done by a lawyer retained to conduct the litigation and that, as a result, they incurred an opportunity cost by forgoing remunerative activity." For his part, Grillone cites *British Columbia v. Okanagan Indian Band*, [2003] 3 SCR 371, para. 22, to the effect that, "The principle of indemnification, while paramount, is not the only consideration when the court is called on to make an order of costs…"

[4] All three of those positions are correct in the right context. Self-represented litigants do not have the same entitlement to costs as do litigants who incurred counsel fees, but indemnification is indeed not the only basis for awarding costs. If the self-represented party has actually lost income due to the time spent on the matter, those losses can be compensated in costs if they are demonstrated in the costs record. Otherwise, any compensation for the personal time spent by parties in representing themselves is at the discretion of the court depending on a number of factors.

[5] While Duca claims a loss of commissions of some $7,000 due to his self-representation, there is no real evidence supporting that claim. While I understand that responding to this appeal has taken up some time, I do not know how or why commission sales have been passed over by Duca. In addition, Duca claims what he calls "special costs" in the amount of $5,000, which he submits is due to Conti's counsel's mistakes and mishandling of the case. I do not agree that Conti's counsel has done anything so egregious to deserve to be sanctioned in that way. Conti's counsel's conduct of the motion before the Associate Justice was the subject of the decision below and costs were awarded accordingly; on the other hand, Conti's counsel's conduct of the appeal before me raises no concerns. They simply were not successful on the merits.

[6] Likewise, it is hard for me to understand Grillone's claim for $5,000 in respect of the time he spent in intervening in this appeal. While his submissions were to the point and helpful, his costs outline is more or less what counsel would submit and not a self-represented party or intervenor. Like Duca, Grillone also states that a costs sanction should be imposed on Conti due to the way the appeal was conducted. Both of them point to the fact that Conti first filed the appeal in Divisional Court before withdrawing it and re-filing it with the Superior Court where it properly belongs.

[7] Conti's misfiling of the appeal was, of course, an error, but it was a legal/administrative one and not the kind of malfeasance that deserves special sanction. There is nothing in the way that Conti's counsel conducted the appeal that was improper or that would prompt me to want to impose a penalty on them.

[8] Having said all of that, I do understand the time and annoyance that Duca and Grillone doubtless experienced in having to respond to an appeal where the Associate Justice had been so obviously correct in his judgment. This has further delayed Duca being able to sell the property and Grillone being able to get paid what Duca owes him. I will therefore exercise my discretion

pursuant to section 131 of the *Courts of Justice Act* to award each of those parties a modest costs award to cover the disbursements that they incurred as well as the overall delay they endured.

[9] Conti shall pay $2,500 in costs to Duca. In addition, Conti shall also pay $2,500 in costs to Grillone. Both of these amounts are payable within 30 days of today and are inclusive of all disbursements and HST (if any).

Date: October 11, 2024 **Morgan J.**